--7. (amended) The method of claim [6] 5, wherein the cells are provided with the protein by introducing into the cells a nucleic acid sequence encoding the protein under conditions such that the cells express an amount of the protein effective to inhibit activation of the cells.--

D2

REMARKS

Claims 1-20 are pending. Applicants have hereinabove amended claims 5 and 7 to more particularly point out the presently claimed invention. Applicants contend that such amendments raise no issue of new matter. Thus, claim 1-20 are pending.

Restriction/Election

On page 2 of the February 27, 1998 Office Action, the Examiner stated that restriction to one of the following inventions is required under 35 U.S.C. §121:

I. Claims 1-4, drawn to a CRAF polypeptide;

II. Claims 5,6, and 11-20, drawn to a method of inhibiting activation by CD40 ligand with a polypeptide;

III. Claims 5-9 and 11-20, drawn to a gene therapy treatment to inhibit activation by CD40 ligand, or

IV. Claims 5 and 10-20, drawn to a method of inhibiting activation by CD40 ligand using a small molecule.

The Examiner stated that the inventions are distinct, each from the other because the inventions of Group I and Group II are related as product and process of use. The Examiner stated that

the inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP §1806.05(h)). The Examiner stated that in the instant case the polypeptide of Group I may be used in screening assays or to generate antibodies.

The Examiner took the position that the inventions of Group I and Groups III and IV are entirely unrelated. The Examiner stated that the polypeptide of Group I is not necessary for the methods of Group III which uses nuclei acids or for the method of Group IV which uses a chemical.

The Examiner stated that the inventions of Groups II-IV are drawn to entirely different methods having different method steps and using different method compositions. The Examiner stated that claims 5 and 11-20 are general claims which do not specify the method of treatment and therefore have been placed in each of Groups II-IV. The Examiner further stated that should applicant elect one of Groups II-IV, claims 5 and 11-20 will be examined only in light of the elected invention. The Examiner stated that the methods of Group II differ from that of Groups III and IV because it requires the administration of a protein which is not required by the latter two Groups. The Examiner stated that the methods of Group III differ from Group II and IV because it is drawn to gene therapy methods and requires the administration of nucleic acids and their expression which is not required in the practice of Groups II and IV. The Examiner stated that Group IV differs from Groups II and III in that it required the use of a small molecule, presumably a chemical which is not required in the methods of either groups III or III.

The Examiner stated that because these inventions are distinct for the reasons given above and have acquired a separate status

in the art as shown by their different classification, restriction for examination purposes as indicated it proper. The Examiner stated that these inventions are distinct for the reasons given above and the search required for any single Group is not required for any of the other Groups, restriction for examination purposes as indicated is proper.

The Examiner stated that this application contains directed to the following patentably distinct species invention:

a. B-cells
b. T-cells
c. Epithelial cells
d. Fibroblast
f. Smooth muscle cells.

The Examiner stated that the species of groups a-f are each drawn to a unique type of cell which is unrelated to the other type of cells and which have entirely different characteristics from each other. The Examiner stated that the different categories of cells are not related and each category would required a unique search not required for any other category. The Examiner stated that the search for B-cells would not provide information with regard to T-cells, epithelial cells, fibroblasts, renal cells or smooth muscle, for example.

The Examiner stated that the applicant is required under 35 U.S.C. §121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claims is finally held to be allowable. The Examiner stated that currently, claims 5-12 are generic.

The Examiner stated that the applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing

of all claims readable thereon, including any claims subsequently added. The Examiner stated that an argument that a claim are generic is considered nonresponsive unless accompanied by an election.

The Examiner stated that upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by the 37 CFR §1.141. The Examiner stated that if claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The Examiner stated that applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. The Examiner stated that in either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

The Examiner stated that applicants is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR §1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. The Examiner stated that if any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Election

In response, applicants respectfully traverse the restriction requirement under 35 U.S.C. §121. Applicants have hereinabove amended claims 5 and 7 to more particularly point out the presently claimed invention. Applicants respectfully request that the Examiner consider joining the following claims together for examination: 1-4, 5 (as amended), 7 (as amended), 8, 9 and 13-20. Applicants maintain that all such claims (except claim 1) now depend from claim 1. Contrary to the Examiner's position, applicants point out that in view of the amendments, the process for using the product as claimed cannot be practiced with another materially different product. For the Examiner's convenience, applicants have attached hereto as Exhibit A, a copy of the proposed claims to be joined for examination. Applicants respectfully request that the Examiner reconsider and join the aforementioned claims for examination in the interest of compact prosecution.

In addition, applicants elect with traverse Group I, claims 1-4. In response to the Examiner's requirement to elect a disclosed species, applicants elect B-cells.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee, is deemed necessary in connection with the filing of this Amendment. However, if any additional fee is required, authorization is given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:
Assistant Commissioner for Patents
Washington, D.C. 20231.

5/20/98

John P. White
Reg. No. 28,678

Date